

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEANDRE L. SMITH,

Defendant.

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CASE NO. 8:10CR51

**MEMORANDUM
AND ORDER**

This matter is before the Court on the motion by the Defendant, Deandre L. Smith, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (“§ 2255 motion”) (Filing No. 39).

FACTUAL BACKGROUND

Smith pleaded guilty to Count I of the Indictment charging him with distributing a mixture or substance containing 5 grams or more of crack cocaine. The plea agreement included the standard waiver of Smith's right to file a § 2255 motion. The waiver includes narrow exceptions, one of which is alleged ineffective assistance of counsel if the grounds for the claim could not have been known by Smith when he entered his guilty plea. In completing the sworn Petition to Enter a Plea of Guilty, and during his testimony under oath at his change of plea hearing, Smith stated he was satisfied with the representation of his attorney, Steven Lefler. Smith was sentenced to 60 months imprisonment and 4 years supervised release. His timely § 2255 motion followed.

DISCUSSION

In his § 2255 motion, Smith argues his attorney: 1) failed to request a continuation of his sentencing hearing; 2) provided ineffective assistance “in relation to” Smith's guilty plea; 3) failed to move for a withdrawal of Smith's guilty plea; 4) failed to file a motion under

Federal Rule of Criminal Procedure 35(a) after sentencing. Smith provided no facts in his motion or a brief. With respect to each claim, the following appears:

- (A) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE, ACCOMPANYING MEMORANDUM OF LAW IN SUPPORT.

(Filing No. 39, at 5, 6, 8 & 9.)

CONCLUSION

Because Smith stated no facts in support of any of his claims, the Court cannot evaluate the claims. Therefore,

IT IS ORDERED:

1. The Defendant's request to file his § 2255 motion out of time (Filing No. 39) is denied;
2. A separate Judgment will be issued denying the § 2255 motion; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 27th day of Sep, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge